

Forest Planning Rule Status

On June 30, 2009, the United States District Court for the Northern District of California issued a decision in Citizens for a Better Forestry v. United States Department of Agriculture ordering the Forest Service to cease the implementation and use of the 2008 planning rule. The Forest Service is complying with the Court's decision. On August 14, 2009 Secretary of Agriculture Tom Vilsack discussed his vision for management of the nation's forests. As part of his speech the Secretary announced that he had asked the Forest Service to prepare a new planning rule. The Washington Office is working on that request now. A summary on the status of the planning rule and plan revision efforts in the Southern Region is provided here. Following that is a set of questions and answers related to the decision to prepare a new rule and how the Region is approaching Forest Plan revisions during the transition to a new Rule.

- Use of the 2008 planning rule has been discontinued.
- The 2000 planning rule is now in effect. In 2002, the 2000 Planning Rule was amended to allow the Forest Service to use the provisions of the 1982 rule to amend or revise plans. The Region will be using the provisions of the 1982 planning rule and is working on how best to transition to them.
- The National Forests in Mississippi, Uwharrie National Forest, and the George Washington National Forests were working on revising their land management plans prior to the court order. Pending upcoming decisions on available funding, the revision efforts of these National Forests will continue under the provisions of the 1982 planning rule.
- Forest Service plan revision teams remain committed to working collaboratively with the public. Planning activities such as public meetings that are independent of any specific planning rule can continue while we determine how best to transition to the provisions of the 1982 rule.
- Plan revision work completed to date remains useful. We are evaluating how to organize and convert this work to fit the provisions of the 1982 rule.
- The Region will be using the provisions of the 1982 rule for revision and amendment efforts until a new NFMA rule is promulgated.

As additional information becomes available, it will be shared with the public and posted on our web sites. For additional information, please contact your local Forest Service office.

Questions and Answers Regarding Forest Plan Revisions

Question: The Court allowed the Forest Service to select either the former 1982 Planning Rule or the 2000 Planning Rule. Why did you select the 2000 Planning Rule?

Answer: The Forest Service is faced with a need for a short-term strategy to follow until a new planning rule is promulgated. The 2000 Planning Rule transition language, as amended in 2002 and as clarified by interpretative rules issued in 2001 and 2004, allows the provisions of the 1982 planning rule to be used until a new rule is promulgated. Some of the Forest Plans in the Region are over 20 years old and we do not wish to lose momentum on our revision efforts by waiting for a new rule. We also do not want to develop plans under the unfamiliar process set out in the 2000 Rule. Therefore, we intend to take advantage of the 2000 Rule's transition provision and apply the familiar provisions of the 1982 Rule.

Question: Why didn't you select the 1982 Planning Rule?

Answer: The district court's order, allowing the Forest Service to choose either the 2000 Rule or the 1982 Rule, did not eliminate the responsibility to follow appropriate procedures involved in making that choice. Under established legal principles, the 2000 Rule, in effect before the 2008 Rule was promulgated, was immediately back in effect when the 2008 Rule was set aside. The transition provision of the 2000 Rule will allow the Forest Service to use the provisions of the 1982 Rule in revising and amending plans until a new rule is promulgated.

Question: How will planning be different from the 2008 Planning Rule?

Answer: While there are many differences between the rules, here are the major changes by using the provisions of the 1982 Planning Rule:

- The Responsible Official for approving the revision will be the Regional Forester, not the Forest Supervisor.
- An Environmental Impact Statement for revisions will be required.
- Management direction to maintain viable populations of existing native and desired non-native vertebrate species in the planning area will be included in plans.
- Management indicator species will be identified.
- Use of either the appeals process or the objection process is possible as provided by the 2000 Planning Rule transition language (as clarified by the 2001 Interpretive Rule, 36 CFR 219.35, Appendix A; 66 FR 1865 (January 10, 2001)). The 2008 Rule only allowed for the objection process.

Question: Will the 2000 Planning Rule transition language modify how the provisions of the 1982 Planning Rule are followed?

Answer: As a general matter, planning with the provisions of the 1982 Rule will proceed as in the past, when the 1982 Rule was officially in effect. However, the 2000 Rule made some changes. First, the 2000 Rule required Regional Guides to be

withdrawn (36 CFR 219.35(e)). Consequently, Regional Guides no longer exist, and no new regional guides will be developed. Direction that had been in the Regional Guides was transferred to the plans themselves or to regional supplements to the manual or handbook. Second, the transition language, as clarified by the 2001 Interpretive Rule, provided the opportunity to use the 2000 Rule objections process rather than an administrative appeals process, even for plans produced in accordance with the provisions of the 1982 Rule (36 CFR 219.35 Appendix A). Third, specifically with respect to plan amendments, the transition language provides that the best available science must be considered in amending the current plan (36 CFR 219.35(a)).

Question: Has the work and public collaboration done so far been wasted?

Answer: No, absolutely not. The key assessments and evaluation of current trends and conditions, the identification of the needs for change, the identification of the public's desires for managing the national forests are all useful in any planning process and will be utilized to the maximum extent possible. Collaboration with the public is essential to not only plan revision work but also to the long-term management of our National Forests and Grasslands.

Question: What will guide the work in the short-term?

Answer: The Agency has a long history of developing Forest Plans under the provisions of the 1982 planning rule. We will continue working on on-going plan revisions for the short-term based on that experience. The Agency and the Region are currently determining how to utilize products developed under the 2008 Planning Rule, while applying the provisions of the 1982 Planning Rule.

The Agency has also developed guiding principles to revise plans. These include:

- keeping a strategic focus to the planning effort;
- maintaining sustainability of National Forest System lands and resources;
- actively collaborating with the public;
- considering best available science; and
- applying adaptive management through monitoring, evaluation and, where appropriate, amendment of plans in a transparent and collaborative manner.

The Southern Region will incorporate these principles into our revision strategy as we apply the provisions of the 1982 Planning Rule.